



U.S. Customs and
Border Protection

United States-Mexico-Canada Agreement (USMCA)

Implementing Instructions Addendum Jan. 12, 2021

CBP Publication Number 1358-0121

ADDENDUM TO USMCA IMPLEMENTING INSTRUCTIONS

(CBP Publication Number 1118 – 0620, published Jun. 30, 2020)

Jan. 12, 2021

Phase 2 Implementation – Six Months After Entry Into Force and Onwards (Jan. 1, 2021)

This addendum to the U.S. – Mexico – Canada Agreement (USMCA) Implementing Instructions (CBP Pub. No. 1118-0620) seeks to inform the trade community of the following USMCA updates:

Consolidated Appropriations Act of 2021

On Dec. 27, 2020, the Consolidated Appropriations Act of 2021 [Public Law No: 116-260 (Dec. 27, 2020) herein after “the Appropriations Act”] became law. It includes updates to the USMCA’s treatment of goods entered through foreign trade zones (FTZ) and merchandise processing fee (MPF) refunds on post-importation claims [i.e. 1520(d) and reconciliation claims]. These changes, contained in the Appropriations Act’s Title VI, USMCA Implementation Act Technical Corrections, §601, are retroactively effective as of July 1, 2020.

Foreign Trade Zones

Under the North American Free Trade Agreement (NAFTA) rules of origin, non-originating goods used in production processes in FTZs could not qualify as originating as a result of that processing. See 19 U.S.C. §3332(a)(2)(A). Specifically, the special rule applicable to FTZs prohibited non-originating goods used in production processes within FTZs from qualifying as originating goods even if all conditions under the general rules were otherwise satisfied, that are entered for consumption in the territory of the United States.

Initially, this prohibition was not incorporated into the USMCA Implementation Act [Pub. Law No: 116-113 (Jan 29, 2020)]. However, Title VI, §601(b) of the Appropriations Act now applies the FTZ special rule of origin to USMCA preferential treatment claims. See 19 U.S.C. §4531(c)(3).

Merchandise Processing Fees

Title VI, §601(e) of the Appropriations Act authorizes CBP to refund merchandise processing fees (MPF) for post-importation claims [i.e. 19 U.S.C. §1520(d) and reconciliation claims] for USMCA preferential treatment.

Importers may make post-summary correction claims (including 1520(d) claims for entries filed to date and going forward, including those filed via Reconciliation), which will include refunds of MPF on approved claims. For questions on making entry, importers can contact the Import Specialist Team at their assigned Center of Excellence of Expertise (www.cbp.gov/trade/centers-excellence-and-expertise-information/cee-directory).

Due to this statutory change, the following references to MPF in the USMCA Implementing

Instructions have been superseded and are no longer valid:

- “Post-Importation Claims” (page 6) (“The MPF paid at time of entry will not be refunded for post-importation claims for preference, under the USMCA.”)
- “Merchandise Processing Fees (MPF) Exemption (page 9) (“...if the claim for preferential tariff treatment is made at the time of entry.”)
- “Protest Rights” (page 17) (“...for claims that were made at the time of entry.”)

End of Restrained Enforcement

CBP elected to exercise a period of restrained enforcement, from July 1 through Dec. 31, 2020, on USMCA preferential treatment claims. This was done in order to provide the trade sufficient time to adjust to the new requirements of the Agreement, and in consideration of the business process changes necessary to achieve full compliance. Notice of the restrained enforcement period was included on page 3 of CBP’s USMCA Implementation Instructions, which was posted on June 30, 2020 [CBP Pub. No. 1118-0620; <https://www.cbp.gov/document/guidance/usmca-implementation-instructions>].

This period of restrained enforcement concluded on Dec. 31, 2020.

Automotive Goods – Additional Time for Verifications

Please note that while the USMCA’s restrained enforcement period ended on Dec. 31, 2020, CBP announced in its USMCA Implementing Instructions that from July 1, 2020 to June 30, 2021, for automotive goods, CBP may allow additional time to respond to a verification (CBP Form 28, Request for Information). Automotive goods include passenger vehicles, light trucks, heavy trucks, or other vehicles; or an applicable part, component, or material listed in Tables A.1, A.2, B, C, D, E, F, or G of the USMCA, Ch. 4, Annex 4-B Appendix.

Used Automotive Goods

The USMCA contains no distinction between new and used automotive goods. All importers seeking USMCA preferential treatment for automotive goods must meet the USMCA's automotive rules of origin provisions.

Extension of Automotive Certification Deadline for Alternative Staging Regime Petitioners

Per the USMCA Implementation Act, a passenger vehicle, light truck, or heavy truck is eligible for preferential tariff treatment only if the producer provides to CBP the required Labor Value Content (LVC) certification, steel certification, aluminum certification, and has information on record to support those calculations relied on for the certifications. CBP permitted automotive producers, exporters, and importers to obtain and submit the necessary certifications and documentation, including any documentation necessary to establish compliance with the Regional Value Content (RVC) requirement, by Dec. 31, 2020.

Several producers sought to participate in the alternative staging regime offered by the USMCA. These petitions were reviewed and approved by the U.S. Trade Representative in late December 2020.

Given the short turnaround between the approval of these petitions and the original deadline for the submission of the LVC certification, steel certification, and aluminum certification, CBP will extend the submission deadline for these producers to Jan. 29, 2021. The extension is available to all alternative staging regime petitioners, but is not applicable to producers of covered vehicles who did not submit an alternative staging regime petition.

Other Updates to USMCA Implementing Instructions

“General Rules of Origin” (page 7)

NAFTA Criterion E is now replaced by Product of Schedule II of the USMCA Appendix A to 19 CFR 182 – Rules of Origin Regulations. [USMCA Article 2.10(2)]

Annex D: Aluminum Certification

For the required data elements, the aluminum certification statement should read as follows.

- **Certifying Statement** – include following certifying statement:
I certify that, over the relevant period indicated in this document, the producer has satisfied the aluminum purchase requirement as set out in GN 11(k) (v). The information in this document is true and accurate, and I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification.

This certification statement text has been updated to reflect that it only applies to aluminum and not steel.

[“Annex D: Aluminum Certification” (p. 32) (“...steel and...)].

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Additional guidance on the USMCA is available at <https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA>. Questions regarding this guidance can be directed to CBP’s USMCA Center at USMCA@CBP.DHS.gov.